IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI`I

VINCENT KHOURY TYLOR and VINCENT SCOTT TYLOR, Plaintiffs, v. MARRIOTT INTERNATIONAL, INC., a Delaware Corporation, dba COURTYARD BY MARRIOTT WAIKIKI BEACH AND/OR COURTYARD WAIKIKI BEACH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; AND DOES ASSOCIATIONS 1-10, Defendants.	)	Case No. CV 14-00069 JMS-RLP **MEMORANDUM IN SUPPORT OF MOTION**

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MEMORANDUM IN SUPPORT OF MOTION

Pursuant to Fed. R. Civ. P. 56, Defendant Marriott International, Inc. ("Marriott") moves for summary judgment with respect to Plaintiffs' claims that arise from activities by the Courtyard by Marriott Waikiki Beach hotel ("the Hotel") on the online service Pinterest.[1] These claims are premised on the use of functionality offered on Pinterest that allows users to "Re-Pin" images that others have already uploaded to the service. Re-Pinning an image merely entails creating a new "link" to a copy of that image stored elsewhere on Pinterest's system. No new copies of the image are created in the process. By using this functionality, the Hotel did not reproduce, display, or distribute Plaintiffs' images and, under established Ninth Circuit law, cannot be liable for copyright infringement. *See Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007) ("*Amazon.com*"). Plaintiffs' claims under 17 U.S.C. § 1202(b) fail for similar reasons. By Re-Pinning Plaintiffs' images, the Hotel did not

[1] Solely for the purposes of this motion, and without waiving any future defenses, arguments or motions, Marriott accepts as true Plaintiffs' allegation that Marriott operated the Hotel, including a commercial website, the Pinterest account, and other social media accounts related to the Hotel. Should this case proceed, however, the evidence will show that the Hotel was a franchised hotel owned and operated by an independent franchisee and management company. Marriott's only connection to the Hotel is based on a franchise agreement. Marriott did not control or operate the day-to-day business of the Hotel, nor did it operate or control the website or social media accounts at issue. This motion is not, however, based on Marriott's status as franchisor, and the Court need not reach that issue to grant this motion.

remove any "copyright management information" or "distribute" copies of those photographs knowing that such information had been removed.

By granting partial summary judgment to Marriott on these claims, which apply to 10 of the 11 works that Plaintiffs have put at issue, the Court will significantly narrow the issues remaining in this case and allow the parties to conduct future proceedings in the most efficient way.

I. BACKGROUND

A. The Pinterest Service And The "Re-Pinning" Process

The claims at issue in this motion arise out of the Hotel's use of Pinterest, so it is important at the outset to explain what Pinterest is and how it works. Pinterest is an online service (located at www.pinterest.com) that allows users to express themselves, connect with others who share their interests, discover new things, and engage with the people who create them. *See* Declaration of Yongsheng Wu ("Wu Decl.") ¶ 3. Pinterest users gather images (known as "Pins") from their own collections or from across the Internet and organize them in collections called "boards." *Id*. A Pinterest board may relate to nearly any topic based on a given user's interests, for example, travel (*e.g.*, http://www.pinterest.com/foodandwine/travel/); architecture (http://www.pinterest.com/mmfarrar/hawaii-architecture), home decor (*e.g.*, http://www.pinterest.com/michaelsstores/home-decor), or surfing (*e.g.*, http://www.pinterest.com/allantito/surfing). Wu Decl. ¶ 3. Users can follow the users and boards they find most interesting, useful, or inspiring. As Pinterest users browse the Internet—including the millions of boards and more than 30 billion Pins currently available on Pinterest—they can add the content they find onto their own boards. *Id*.

There are two ways that users can include content on a board. *First*, users can create new Pins by uploading content from their computers or mobile devices or by using content found on another website. User may create a new Pin from a website by using one of Pinterest's browser extensions, by clicking on a "Pin It" button that many websites incorporate to encourage users to Pin content, or by entering the URL where the image is found into Pinterest's upload tool. *Id*. ¶ 4. In response to a user's request to add a new Pin, Pinterest's computer systems automatically create several copies of the image (in various sizes) to be stored on Pinterest's servers. *Id*. ¶ 5. Each new Pin is assigned a Uniform Resource Locator ("URL")—a unique online address (*e.g.*, http://www.pinterest.com/pin/126171227030749745 (photograph of Byodo-In Temple)) referred to for purposes of this motion as a "Pin URL." Wu Decl. ¶ 5. When the upload process is complete, the user can include the resulting Pin in any board she chooses. *Id*. If the Pin originated on another website, it will include a "hyperlink" that directs a user who clicks on the link to the online location from which the image was Pinned. *Id*.

Second, Pinterest users can populate their Boards by "Re-Pinning" images that have already been posted on Pinterest. *Id*. ¶ 6. Once a Pin has been created on Pinterest, any other user can Re-Pin it to a new board simply by clicking a button next to the Pin. *Id*. ¶ 7. It is common, therefore, for a single Pin to appear in many different boards created by different Pinterest users covering different topics. For example, the image of the Byodo-In Temple referenced above was originally pinned on a Board called "Aloha from Hawaii" (http://www.pinterest.com/treyratcliff/aloha-from-hawaii). Wu Decl. ¶ 7. It was subsequently Re-Pinned on various other Boards, including "Dream Vacation," "Green Grass," and "Places I'd Like to Go. *Id*.

Re-Pinning differs from creating a new Pin in important ways. Most significantly, when a user Re-Pins an image, ***no new copies of the image are created***. *Id*. ¶ 8. Instead, in response to a Re-Pin instruction, Pinterest's system creates a link to the existing Pin URL on the Re-Pinning user's board. *Id*. The Re-Pinned image does not move as part of that process, and it is not reproduced or modified in any way. *Id*. This is because the images appearing on a given board are not actually stored on or served from that board. *Id*. Instead, a board consists of text (which describes the board and its constituent Pins) surrounding a series of image "frames." *Id*. Those frames do not include the images themselves; instead, they use instructions written in the Hypertext Markup Language

("HTML") to point a user's web browser to the location elsewhere on Pinterest's system where the image is stored. *Id*. Thus, while a Board may look like a single webpage containing multiple images, it actually consists of a patchwork of text and links to images stored elsewhere on Pinterest's servers. When a user asks to Re-Pin an image on her board, Pinterest simply adds a new frame, which includes an in-line link to the actual copy of the image. *Id*. The image is not copied and no new versions of it are created and stored on Pinterest's system. *Id*. Clicking on the framed image causes the user's browser to be directed to the webpage corresponding to that Pin URL. *Id*. By clicking on the image from there, users are directed to the third-party webpage from which the image was originally Pinned. *Id*.

The process that Pinterest uses in connection with Re-Pinning (known as "framing") is common across the Internet. *See Amazon.com*, 508 F.3d at 1156 ("The process by which the webpage directs a user's browser to incorporate content from different computers into a single window is referred to as 'in-line linking.' The term 'framing' refers to the process by which information from one computer appears to frame and annotate the in-line linked content from another computer.") (internal citation omitted); *cf. Flava Works, Inc. v. Gunter*, 689 F.3d 754, 756 (7th Cir. 2012) (describing linking and framing in the context of a video bookmarking service). It is well settled that an online service that uses framing to allow its users to see images that are stored elsewhere does not reproduce, display, or distribute works within the meaning of the Copyright Act. *Amazon.com*, 508 F.3d at 1159-63. And, as discussed below, a Pinterest user who uses these same processes to Re-Pin images does not do so either.[2]

B. Plaintiffs' Claims Against Marriott Based On The Hotel's Use of Pinterest

Plaintiffs are photographers and frequent copyright plaintiffs.[3] Repeating a pattern they have used in several other cases, Plaintiffs have sued Marriott and various unnamed "Doe" defendants, asserting claims under the Copyright Act and the "copyright management information" provisions of the DMCA (17 U.S.C. § 1202(b)). Compl. ¶¶ 3-4, 28-48. This case involves eleven photographs depicting scenes in Hawaii, for which Plaintiffs claim to have registered copyrights. *Id.* ¶¶ 12-16. With respect to all but one of those photographs, Plaintiffs' claims arise out of the inclusion of the image on the Hotel's Pinterest Board. *Id.* ¶¶ 19-20.[4] Plaintiffs allege that by including the photographs at issue on that Board, the Hotel directly infringed Plaintiffs' copyrights by engaging in "unauthorized use, copying, distribution, and/or display" of the works at issue. *Id.* ¶ 30. This case involves only direct infringement claims; Plaintiffs do not assert claims for secondary infringement. *Cf. Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 433-35 (1984) (describing difference between direct and secondary copyright infringement).

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[2] This does not leave parties in Plaintiffs' position without recourse. Copyright owners who believe that their works are have been posted without proper authorization can send Pinterest "notification of claimed infringement" under Section 512 of the Digital Millennium Copyright Act ("DMCA"). *See* 17 U.S.C. § 512(c)(3) (setting out requirements for DMCA takedown notices); https://about.pinterest.com/en/copyright (describing Pinterest's copyright and DMCA policies).

[3] *See, e.g.*, *Tylor v. Lorica et al.*, No. 1:13-cv-00279-SOM-BMK (D. Haw. May 31, 2013); *Tylor et al. v. Rhythm of Life Cosmetics, Inc. et al.*, No. 1:13-cv-00280-DKW-KSC (D. Haw. May 31, 2013); *Tylor v. Gypsy Guide Hawaii, LLC et al.*, No. 1:13-cv-00300-SOM-BMK (D. Haw. June 14, 2013); *Tylor et al. v. Castle Resorts & Hotels, Inc. et al.*, No. 1:13-cv-00432-ACK-KSC (D. Haw. August 28, 2013); *Tylor et al. v. Aqua Hotels & Resorts, LLC et al.*, No. 1:13-cv-00433-LEK-BMK (D. Haw. Aug 28, 2013); *Tylor v. Aston Hotels & Resorts, LLC et al.*, No. 1:13-cv-00648-ACK-RLP (D. Haw. Nov 25, 2013); *Tylor et al. v. Discovering Hidden Hawaii Tours, Inc., et al.*, No. 1:14-cv-00036-JMS-RLP (D. Haw. Jan 24, 2014); *Tylor v. Scott Shoe Co., Ltd.*, No 1:14-cv-00065-DKW-BMK (D. Haw. Feb 5, 2014); *Tylor et al. v. Copley Investment Group, LLC*, No. 1:14-cv-00211-JMS-BMK (D. Haw. May 2, 2014); *Tylor v. Vezer Family Vineyard, LLC*, No. 2:14-cv-00754-MCE-AC (E.D. Cal. Mar 24, 2014); *Tylor v. Anderson Anderson, Inc., dba Anderson Anderson Architecture*, No. 3:13-cv-05054-SC (N.D. Cal. Oct 29, 2013); *Tylor et al. v. PPF Hawaii LLC, et al.*, No. 1:14-cv-00297-SOM-KSC (D. Haw. Jun 27, 2014).

Significantly, however, the Hotel did not upload any of Plaintiffs' photographs to Pinterest. This case instead arises from the Hotel's *Re-Pinning* of the images, which had already been posted on the service by other Pinterest users.

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[4] Plaintiffs' infringement claim regarding the final image ("Chinamans Hat02"), which was allegedly displayed on the Hotel's website (Compl. ¶ 20), is unrelated to Pinterest and thus outside the scope of this motion. In seeking partial summary judgment, Marriott reserves all of its rights and defenses, and it will show at the appropriate time that Plaintiffs' claims with respect to that image fail, albeit for different reasons.

That the Hotel was not responsible for putting any of those photographs on Pinterest is clear from the materials attached to Plaintiffs' Complaint and confirmed by the declaration the Pinterest has provided in connection with this motion. Wu Decl. ¶ 9.[5] Nevertheless, Plaintiffs have sued Marriott, claiming that by Re-Pinning the images, the Hotel reproduced, publicly displayed, and/or publicly distributed their works in violation of the Copyright Act (17 U.S.C. § 106). Plaintiffs also assert claims under 17 U.S.C. § 1202(b), which prohibits the intentional removal of "copyright management information" and the knowing "distribution" of works from which such information had been removed. Compl. ¶¶ 25-26, 43-44. Because Plaintiffs' claims ignore indisputable facts about the Pinterest service and are contrary to established law in this Circuit, Marriott brings this motion for partial summary judgment.

II. ARGUMENT

Summary judgment is appropriate when the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a

[5] The URLs for the images on Pinterest, as well as the screenshots attached to the Complaint, show that the original Pinners of the photographs at issue were Pinterest users "Denise Lasley," "Talia Wanta," "Naomi Putney," "DeeJay Riley," "Janeen Frazier," "Carrie Dalton," "Azell Jacobson," and "Natali Mushuko." Compl. ¶¶ 19-20 & Exs. C & D; Wu Decl. ¶ 9. Plaintiffs have not named any of those individuals in the Complaint or made efforts to hold them liable for copyright infringement.

matter of law." Fed. R. Civ. P. 56(c). "A 'genuine issue' of material fact arises if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir. 2003) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (citation omitted). Where a rational trier of fact could not find for the nonmoving party, no genuine issue exists for trial. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Marriott can satisfy its burden on summary judgment with affirmative evidence or by "'showing'—that is pointing out to the district court—that there is an absence of evidence to support [Plaintiffs'] case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once Marriott makes that showing, Plaintiffs cannot simply rest on the pleadings or argue that any disagreement or "metaphysical doubt" about a material issue of fact precludes summary judgment. *Id.* at 323. Instead, Plaintiffs would have to set forth "significant probative evidence" in support of their position. *T.W. Elec. Serv. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

Summary judgment is warranted here because Plaintiffs' claims regarding the photographs that the Hotel included on its Pinterest boards fail based on the undisputed facts. "Plaintiffs must satisfy two requirements to present a prima facie case of direct infringement: (1) they must show ownership of the allegedly infringed material and (2) they must demonstrate that the alleged infringers violate at least one exclusive right granted to copyright holders under 17 U.S.C. § 106." *A&M Records Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). Here, Plaintiffs put at issue three exclusive rights: reproduction, public display, and distribution. Compl. ¶ 30; 17 U.S.C. § 106(1), (3), (5).[6] But the Hotel did not violate any of those rights by Re-Pinning images that other people had already posted to Pinterest. The Hotel's actions did not cause any new copies of Plaintiffs' images to be created and thus did not infringe the reproduction right. Likewise, under the Ninth Circuit's decision in *Amazon.com*, framing and providing in-line links to images stored on someone else's system does not implicate the display or distribution rights. Plaintiffs' claims under § 1202(b) fail for similar reasons. By linking to pre-existing copies of Plaintiffs' works on the Pinterest service, the Hotel could not have intentionally removed any "copyright management information" from those images, and it did not "distribute" Plaintiffs' works at all.

[6] Plaintiffs repeatedly refer to "use" but that is not an exclusive right conferred on copyright owners. 17 U.S.C. § 106. While this motion focuses on Plaintiffs' inability to establish that any of the § 106 exclusive rights were infringed, Marriott in no way concedes that Plaintiffs can establish ownership of a valid copyright. Marriott reserves its rights to attack the validity of Plaintiffs' claims of copyright ownership and registration at an appropriate time, if necessary.

A. The Hotel's Alleged Re-Pinning Did Not Violate The Reproduction Right

Plaintiffs' claims that Defendants violated the reproduction right fail because the undisputed facts make clear that by Re-Pinning images to its Pinterest boards, the Hotel did not cause any new copies of Plaintiffs' works to be created.

The reproduction right is the exclusive right of copyright owners "to reproduce the copyrighted work *in copies*." 17 U.S.C. § 106(1) (emphasis added). The Copyright Act defines "copies" as "material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." *Id.* § 101. Accordingly, to violate the reproduction right, a copyright defendant must produce or caused to be produced a new copy—*i.e.*, a new "material object," in which the work is "fixed" and from which it can be "communicated." *Id*. Even assuming that a copy is made when a new digital version of a work is fixed in a computer's memory (*compare MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 517-18 (9th Cir. 1993), *with Cartoon Network LP v. CSC Holdings, Inc.*, 536 F.3d 121, 127-30 (2d Cir. 2008)), that is not what happened here.

As explained above, the only action that the Hotel took in connection with any of the photographs on Pinterest was to repin those images from other users' Boards**.** ***But Re-Pinning an image does not cause any new copies of that image to be created.*** Wu Decl. ¶ 8. Copies of the images that the Hotel Re-Pinned were already posted on Pinterest, and the Hotel had nothing to do with the creation of those copies. Nor did the Hotel's actions bring any new version of the images into existence. *Id*. Instead, the Hotel's interactions with Pinterest's system resulted merely in the creation of new in-line links to the *preexisting* copies stored on Pinterest's system. *Id.* ¶¶ 8-9. Under the plain language of the Copyright Act, that simply is not an act of reproduction and does not implicate Plaintiffs' reproduction right. *See Amazon.com*, 508 F.3d at 1160-61 (explaining that framing an in-line link does not result in the creation of a new copy).

B. The Hotel's Re-Pinning Did Not Violate The Display Or Distribution Rights

Plaintiffs' public display and distribution claims likewise fail, as they run headlong into the text of the Copyright Act and the Ninth Circuit's holding in *Amazon.com*.

As to display, the Ninth Circuit made clear that using a frame to in-line link to a copyrighted work residing on someone else's computer is not a "display" of the work within the meaning of the Copyright Act. *Amazon.com,* 508 F.3d at 1159-62; *accord* 17 U.S.C. § 101 ("To 'display' a work means to *show a copy* of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.") (emphasis added). *Amazon.com* involved facts directly analogous to those here. A copyright owner (Perfect 10) sued Google because its search engine provided links to unauthorized copies of Perfect 10's photographs. The full-size versions of those photographs were located on third-party websites indexed by Google's search engine. Google did not store the full-size images on its own system. *Amazon.com*, 508 F.3d at 1155-56. Instead, Google "simply provide[d] HTML instructions directing a user's browser to access a third-party website." *Id.* at 1156. Through this process, the user's browser "window appears to be filled with a single integrated presentation of the full-size image, but it is actually an image from a third-party website framed by information from Google's website." *Id*. The Ninth Circuit held as a matter of law that by providing frames though which these images could be perceived, Google did not violate the display right: "the owner of a computer that does not store and serve the electronic information to a user is not displaying that information, even if such owner in-line links to or frames the electronic information." *Id.* at 1159.

Amazon.com's holding resolves this case. The Hotel's interaction with Plaintiffs' photographs was limited to creating frames on its Pinterest Boards that used in-line links to connect to copies of the images. Wu Decl. ¶¶ 8-9. Those images were stored elsewhere, on a computer system that the Hotel did not operate or control. Neither the Hotel's own computers nor its Pinterest boards contain any actual copies of the photographs at issue. *Id.* ¶ 8. What the Ninth Circuit said about Google thus applies directly to the Hotel:

> Google does not, however, display a copy of full-size infringing photographic images for purposes of the Copyright Act when Google frames in-line linked images that appear on a user's computer screen. Because Google's computers do not store the photographic images, Google does not have a copy of the images for purposes of the Copyright Act. * * * Instead of communicating a copy of the image, Google provides HTML instructions that direct a user's browser to a website publisher's computer that stores the full-size photographic image. Providing these HTML instructions is not equivalent to showing a copy.

Amazon.com, 508 F.3d at 1160-61. So it is here. Like Google, the Hotel does not have copies of Plaintiffs' images, and it does not "show a copy" of any such images by Re-Pinning them in ways that do nothing more than direct users' web browsers to the location on Pinterest's system where the images already exist. In short, merely by creating frames that link to images stored on a third-party's computers, the Hotel does not violate the display right.[7]

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[7] As the Ninth Circuit explained, moreover, it makes no difference whether someone looking at the Hotel's Pinterest board might assume (incorrectly) that

(continued…)

Nor did the Hotel violate Plaintiffs' right to distribute copies of its works "to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 106(3). A "distribution requires an 'actual dissemination' of a copy." *Amazon.com*, 508 F.3d at 1162 (quoting *Perfect 10 v. Google, Inc.*, 416 F. Supp. 2d 828, 844-45 (C.D. Cal. 2006)). In *Amazon.com*, the Ninth Circuit held that using frames to provide in-line links to images stored on other people's computer systems is not a distribution for purposes of the Copyright Act. The Court of Appeals explained that by communicating "HTML instructions that tell a user's browser where to find full-size images on a website publisher's computer," Google's search engine "does not itself distribute copies of the infringing photographs." *Id*. Plaintiff's distribution claim here fails for the same reason. Like Google, the Hotel "does not own a collection of [Plaintiffs'] full-size images and does not communicate these images to the computers" of people viewing its Pinterest Boards. *Id.* Because it does not have those images stored on a computer system that it owns or controls, the

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(…continued)

the images are displayed from that one page: "While in-line linking and framing may cause some computer users to believe they are viewing a single Google webpage, the Copyright Act, unlike the Trademark Act, does not protect a copyright holder against acts that cause consumer confusion." *Amazon.com*, 508 F.3d at 1161.

Hotel does not (and could not) disseminate copies of Plaintiffs' photographs to the public. *See* Wu Decl. ¶ 8.

C. The Hotel Did Not Violate The DMCA's Copyright Management Information Provisions By Re-Pinning Images On Its Pinterest Boards

Plaintiffs also allege that Marriott "intentionally removed copyright management information" or "distributed those photographic works at issue knowing that … copyright management information had been removed or altered." Compl. ¶ 43. These claims are based on 17 U.S.C. § 1202(b):

> No person shall, without the authority of the copyright owner or the law—
>
> (1) intentionally remove or alter any copyright management information,
>
> (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or
>
> (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,
>
> knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

The same facts that doom Plaintiffs' copyright infringement claims also doom their claims under this provision.

As an initial matter, a claim under subsection (b)(1) would require Plaintiffs to show that the Hotel intentionally removed or altered Plaintiffs' copyright management information. But, given that the Hotel merely created new links to existing version of the images on Pinterest, it could not have removed or altered any information that might have been present in those images. The images that the Hotel Re-Pinned had already been uploaded to Pinterest's system and were completely unchanged by the Hotel's actions. Wu Decl. ¶¶ 8-9. If those preexisting images included "copyright management information" (as defined by § 1202), the versions linked to from the Hotel's Boards would have shown that same information; if that information was not present, it was because the preexisting copies did not have it. *Id*. Either way, nothing that the Hotel did had any effect on the presence or absence of such information. As such, the Hotel did not "remove" or "alter" whatever copyright management information was once associated with Plaintiffs' images, and it certainly did not do so "intentionally."

The Hotel similarly could not have violated subsections (b)(2) or (b)(3) because those provisions require a showing that the defendant "distributed" "copies" of the works at issue. (The definitions of "distribute" and "copies" are the same ones used in 17 U.S.C. § 101: that provision defines terms "as used in this title," and § 1202 is in Title 17.) As explained above, the Hotel did not "distribute" Plaintiffs' photographs within the meaning of the Copyright Act because linking to an image on someone else's computer system is not a distribution of that image. *Amazon.com*, 508 F.3d at 1162-63. Accordingly, the Hotel simply did not perform the most basic act needed for a claim under § 1202(b)(2) or (b)(3). The Court need go no further.

III. CONCLUSION

The undisputed facts establish that by Re-Pinning images that other users had already uploaded to Pinterest, the Hotel did not create, display, distribute, or modify any copies of Plaintiffs' photographs in violation of the Copyright Act or § 1202(b) of the DMCA. The Court therefore should grant summary judgment to Marriott on all claims arising from its alleged interactions with those images on Pinterest.

Dated: Honolulu, Hawai`i, September 22, 2014.

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